TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 164

JAMES W. BOTHWELL, WILLIAM J. MICHEL, ET AL., RECEIVERS OF EMPLOYERS MUTUAL INSURANCE AND SERVICE COMPANY, PETITIONERS,

vs.

BUCKBEE, MEARS COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED JANUARY 26, 1927

CERTIORARI GRANTED MARCH 7, 1927

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( )

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IN SUPREME COURT OF MINNESOTA

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY Hurlbut, William E. Thomsen, Arthur M. Siegk, Receivers of Employers Mutual Insurance and Service Company, Plaintiffs-Respondents,

vs.

BUCKBEE, MEARS COMPANY, Defendant-Appellant

Record

Settled Case from District Court of Ramsey County

PETITION AND ORDER PERMITTING INSTITUTION OF SUIT

To the honorable the judge of the said court:

The petition of James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen and Arthur M. [fol. 2] Siegk, Receivers of the Employers Mutual Insurance & Service Company, respectfully shows unto your Honor:

1. By order of the Circuit Court No. 2 of Baltimore City, Maryland, a Court of record, having general equity jurisdiction, your petitioners were appointed Receivers of the Employers Mutual Insurance & Service Company, and have duly qualified as such, and by subsequent order of said Circuit Court No. 2 of Baltimore City, were authorized and directed to bring any suit and to take any further action which they found necessary to secure the collection of unpaid assessments due to the said Employers Mutual Insurance & Service Company.

2. An assessment of $633.60 was duly made against Buckbee-Mears Company, a person or corporation subject to the jurisdiction of this Honorable Court. Notice of said assessment and demand therefor was made to him on or about June 30, 1921. Said assessment now remains unpaid except the sum of $— which has been paid.

3. A full statement of the circumstances under which the said liability for assessment arose is set forth in the declaration which is hereto attached.

4. No receivership or ancillary receivership of said Employers Mutual Insurance & Service Company has been granted or applied for in any Court of this State, and your petitioners believe and aver that the rights of no persons, citizens or residents of this State, will be prejudiced [fol. 3] by the passage of an order granting your petitioners permission to bring suit for the collection of the assessment aforesaid in this Honorable Court. That there are no creditors of said Employers Mutual Insurance and Service Company within this State whose rights or interest may be affected by this order.

Wherefore, your petitioners pray that an order may be passed herein, granting your petitioners permission to bring suit against Buckbee-Mears Company, who is subject to the jurisdiction of this Court upon the cause of action set forth in the annexed declaration.

And as in duty bound, etc.,

Barrows & Metcalf, Attorneys for Receivers of Employers Mutual Insurance & Service Company.

Duly sworn to by Wm. E. Thomsen. Jurat omitted in printing.

[fol. 4] Order

Upon the aforegoing petition and affidavit, it is this 18th day of June, 1924, by the District Court, ordered that permission be and it is hereby given James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen and Arthur M. Siegk, Receivers of the Employers Mutual Insurance & Service Company, to bring suit in this Court as prayed.

Charles Beehhoefer, Judge.

[fol. 5] Summons, June 19, 1924, omitted in printing.

COMPLAINT

To the honorable the judge of said court:

James W. Bothwell, of New York City, New York; William J. Michel, of Chicago, Illinois; C. Stanley Hurlbut, of Philadelphia, Pennsylvania; William E. Thomsen, of Baltimore, Maryland, and Arthur M. Siegk, of Baltimore, Maryland, Receivers of Employers Mutual Insurance & Service Company, a corporation of the State of Maryland, by their attorney sue Buckbee-Mears Company,

For money payable by the Defendant to the Plaintiffs.

And for further cause of action these Plaintiffs allege as follows:

(a) The Employers Mutual Insurance & Service Company is a mutual insurance company organized and existing under the laws of the State of Maryland, and was at the time the cause of action herein set forth arose engaged in the business of writing insurance known as "Strike Insurance."

[fol. 6] (b) On August 26, 1921, a bill of complaint was filed by Thomas J. Keating, Insurance Commissioner of the State of Maryland, against Employers Mutual Insurance & Service Company in the Circuit Court No. 2 of Balimore City, Maryland, a Court of record having general equity jurisdiction, alleging insolvency and praying for an order restraining the company from further carrying on its business of insurance, and praying for the appointment of Receivers.

(c) On November 9, 1921, the said Circuit Court No. 2 of Baltimore City, upon consideration of the said bill of Complaint and the other papers filed and after the Employers Mutual Insurance & Service Company had in open Court admitted insolvency, passed an order appointing the Plaintiffs herein Receivers of the said Employers Mutual Insurance & Service Company, with power and authority to take charge and possession of the real estate, goods, merchandise, moneys, books, papers and checks of or belonging to the said Employers Mutual Insurance & Service Company and to collect the outstanding debts due to the said corporation, including all assessments legally assessed

against its policyholders. The said order required the persons named to give bond in the penalty of $50,000.00 before they should proceed to act as receivers, and such bond has been duly given by the Plaintiffs herein and is now filed in the said Circuit Court No. 2 of Baltimore City, and said Receivers are in all respects fully qualified as such.

[fol. 7] (d) On June 6, 1924, the said Circuit Court No. 2 of Baltimore City, by order authorized and directed the said Receivers to bring any suit and take any further action which they thought necessary or desirable to secure the prompt collection of all unpaid assessments due to the said Employers Mutual Insurance & Service Company.

(e) On or about the 22nd day of October, 1920, the Employers Mutual Insurance & Service Company issued its written strike policy to the Defendant herein, whereby the Employers Mutual Insurance & Service Company agreed to indemnify the Defendant for one year against the loss sustained by Defendant and caused by a strike of all or part of Defendant's employees, subject to the terms and conditions set forth in said written policy; and in consideration thereof, the Defendant then paid to the Employers Mutual Insurance & Service Company a premium deposit of $633.60, and agreed to pay to the Employers Mutual Insurance & Service Company all such further sums as might from time to time be assessed on said policy by the Board of Directors of said Company, in conformity with the Articles of Incorporation and By-Laws of the Company and the laws of the State of Maryland, provided that such further sums should not in any case be more in any one policy year than an amount equal to the premium deposit of such policy year.

(f) The By-Laws of said Employers Mutual Insurance & Service Company attached to the policy so issued to De-[fol. 8] fendant herein, contained the following clause:

Article 6. Each member of this Company shall pay in addition to the cash premium written in his policy, all such sums as may be assessed by the Directors of this Company pursuant to the laws of the State of Maryland, but not in any event to exceed an additional amount equal to the

amount of the cash premium. And the Directors may, from time to time, whenever the Company in their discretion has sufficient surplus to warrant such action, declare a dividend out of such surplus to policyholders who have been members for three years or more.

(g) The laws of the State of Maryland with respect to mutual insurance companies include, among other provisions the following as contained in the Code of Public General Laws of the State of Maryland:

Article 23, Sec. 113. Except as otherwise provided, the policyholder shall be a member of the company while the policy is in force.

Sec. 114. The maximum premium, or premium deposit payable by any member shall be expressed in the policy or in the application for the insurance. Such maximum premium, or premium deposit, may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium with no contingent premium or liability to assessment in any event. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock and surplus [fol. 9] required of domestic stock companies transacting the same kinds of insurance.

Sec. 118. Such company not possessed of assets at least equal to the unearned premium reserve and other liabilities, shall make an assessment to provide for such deficiency upon only such members as are liable to assessment in proportion to their several liabilities expressed in their policies.

(h) The Employers Mutual Insurance & Service Company, in addition to issuing its policy to the Defendant herein, issued between May, 1920, and August, 1921, a large number of policies to persons and corporations engaged in the printing business.

(i) During the period from May, 1920, until May 27, 1921, many strikes arose in various parts of the country and many members and policyholders of said Employers Mutual Insurance & Service Company suffered loss by rea-

son of such strikes and became entitled to make and did make large claims for such losses against the said Employers Mutual Insurance & Service Company; particularly large claims for strike losses were made against the said Employers Mutual Insurance & Service Company by persons and corporations engaged in the printing business. Such strike losses covered by policies of insurance of the said Employers Mutual Insurance & Service Company, for which claims have been made are approximately Six Million Dollars, whereas the total assets, including this assessment, did not at the time of the assessment and have not since exceeded one-fourth of this amount.

[fol. 10] (j) The Defendant herein was a member of said Employers Mutual Insurance & Service Company and a policyholder therein, and his policy was in force at the time that the losses aforesaid were incurred and was in force on May 10th, 1921.

(k) Thereupon the Board of Directors of the said Employers Mutual Insurance & Service Company on May 31, 1921, at a meeting duly called, passed the following Resolution:

"Be it resolved that an assessment of 100% of the premium deposits is hereby levied on all members of the company on all policies in force May 10, 1921, said assessments payable as follows:

50%—June 20, 1921.
30%—July 20, 1921.
20%—August 20, 1921."

1. Thereafter the Board of Directors of the said Employers Mutual Insurance & Service Company on June 13, 1921, at a meeting duly called, passed a further resolution providing that the date of the first instalment of the 100% assessment be deferred until June 30, 1921, the dates of the other instalments of assessments to remain the same, so that the assessments became payable as follows:

June 30, 1921 —50%
July 20, 1921 —30%
August 20, 1921—20%

(m) Thereafter, the Board of Directors of the said Employers Mutual Insurance & Service Company on September 30, 1921, at a meeting duly called, passed the following Resolution:

[fol.11] "The assessment of 100% levied on all policies on May 31, 1921, effective as to all policies in force as of May 10, 1921, be and is hereby made to apply to all policies that had expired or been cancelled prior to May 10, 1921, the intent being to make said assessment cover all policies legally liable therefor."

(n) Due notice of such assessment was thereupon on or about June 30th, 1921, sent to the Defendant and the Defendant was then debited upon the books of the said Employers Mutual Insurance & Service Company in an amount equal to 100% of the deposit premium above set forth. Thereupon, on June 30, 1921, 50% of said assessment became due and payable by the Defendant to the said Employers Mutual Insurance & Service Company, and thereafter on July 20, 1921, 30% of said assessment became due and payable by the Defendant to the said Employers Company, and thereafter on August 20, 1921, the remaining balance of 20% of said assessment became due and payable by the Defendant to the said Employers Mutual Insurance & Service Company. Demand for the payment of the said assessment has been made upon the Defendant, but such demand has been disregarded and no part of such assessment has been paid, leaving a balance now due of $633.60, with interest.

(o) Because of their appointment as Receivers of said Employers Mutual Insurance & Service Company, these Plaintiffs are now entitled to collect said indebtedness and [fol. 12] have duly demanded the same, but no part thereof has been paid to them.

Wherefore, Plaintiffs demand judgment against defendant for $633.60, with interest at 6% from August 20th, 1921, with costs and disbursements herein.

Barrows & Metcalf, Attorneys for Plaintiffs, 1604 Pioneer Bldg., St. Paul, Minnesota.

ANSWER

Now comes Buckbee-Mears Company, defendant in the action above entitled, and for answer to the plaintiffs' complaint therein:

I

Deny each and every allegation, statement, matter and thing in said complaint contained and every part thereof, as therein stated or otherwise, and save such thereof as are hereinafter expressly admitted.

II

Admit and allege that the Employers Mutual Insurance and Service Company mentioned in said complaint was and is a foreign corporation, organized and existing under the laws of the State of Maryland and having its office and [fol. 13] place of business within the State of Maryland, and that on or about October 22, 1920, it issued to the defendant a policy wherein it agreed to indemnify the defendant for one year against loss sustained by defendant caused by a strike of all or part of defendant's employes, and that at Saint Paul, Minnesota, the defendant paid said company Six Hundred Thirty-three and 60/100 Dollars ($633.60) therefor. That said policy was so sold and delivered to the defendant by an agent of said company at Saint Paul within the State of Minnesota, and the contract whereby the same was issued was made and entered into between said company and this defendant within the State of Minnesota.

III

Further answering, the defendant alleges that said Employers Mutual Insurance and Service Company was never qualified, permitted or authorized to transact business within the State of Minnesota, and never appointed any resident agent within the State of Minnesota, as required by the statutes of the State of Minnesota, and never in any respect complied with other statutes of the State of Minnesota necessary to qualify to do business therein. And this defendant alleges that the said plaintiffs in this action, purporting to be Receivers of said corporation and to rep-

resent it as such, have not the right to appeal to the Courts of Minnesota to enforce the cause of action set out in said complaint.

[fol. 14] Wherefore, defendant demands that plaintiffs take nothing by this action and that it recover its costs and disbursements herein sustained.

Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant, 1015 Merchants National Bank Bldg., Saint Paul, Minnesota.

REPLY

Plaintiffs, for their reply to the answer herein, reaffirm each and every averment, allegation, matter and thing in the complaint herein contained, and deny each averment and allegation of new matter contained in the answer of this defendant, except as may be herein admitted or qualified.

The plaintiffs admit that the Employers Mutual Insurance and Service Company has never received written license or authority from the State of Minnesota to do business therein, and admits that it has never appointed a resident agent within the State of Minnesota upon whom service of process might be made, but this plaintiff alleges that the contract of insurance referred to in the complaint herein was a contract made without the State of Minnesota and constituted and was a contract between citizens of different States, and was and is a valid contract of insurance; that this action is brought by the Receivers of [fol. 15] said Insurance Company as Officers of Circuit Court No. 2 of Baltimore City, Maryland, a court of record having general equity jurisdiction, and that on the 18th day of June, 1924, by order of the above named Court duly made and entered herein, permission was granted to the said Receivers of said Insurance Company to bring and maintain this action in this court.

Wherefore, Plaintiffs pray judgment as in their complaint demanded.

Barrows & Metcalf, Attorneys for Plaintiff, 1604 Pioneer Bldg., St. Paul, Minn.

STIPULATION OF FACTS

It is stipulated by and between the parties hereto as follows:

I

That all the allegations contained in the complaint herein are true.

II

That defendant is a corporation organized and operating under the laws of the State of Minnesota, engaged in the manufacturing business, with its principal place of business [fol. 16] and only factory situated in the City of Saint Paul, Ramsey County, Minnesota.

III

That the plaintiff, Employers Mutual Insurance and Service Company, is a foreign corporation, organized and existing under the laws of the State of Maryland, and that it has never complied with the laws of the State of Minnesota in respect to qualifying for the purpose of transacting business within the State of Minnesota, and has never appointed a resident agent within the state as required by the statutes of the state, and has not complied with the statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of the plaintiff to do business within the state.

IV

That the contract of insurance herein was made and entered into in the following manner: A representative of the plaintiff came to the State of Minnesota, and at a public meeting held in said County and State, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the plaintiff, and at that time and place distributed blank forms of application for membership in and insurance in said plaintiff company, and that this defendant, receiving one of said blank forms, caused the same to be filled out and sent down the same with its [fol. 17] check covering the initial premium or assessment to the home office of the plaintiff company at Baltimore.

Thereupon, the policy or contract was written at the home office of the plaintiff company and mailed to the defendant in said county and state.

V

It is further stipulated that upon this stipulation and upon all the files herein, the case is submitted to the court without argument, but with permission to both sides to file briefs with the court within ten days from the date hereof.

Dated this 4th day of March, 1925.

Barrows & Metcalf, Attorneys for Plaintiffs. Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on for trial at a General Term of this court on the 6th day of March, 1925. Plaintiffs appeared by their attorneys, Barrows & Metcalf, and the defendant by its attorneys, Oppenheimer, Peterson, Dickson & Hodgson. Thereupon, the action was submitted [fol. 18] for decision upon a stipulation of facts between the parties, dated the 4th day of March, 1925.

Now, upon such stipulation, after due consideration, the Court finds as Facts:

1. All of the allegations contained in the complaint are true.

2. Defendant is and during the times named in the complaint has been a corporation organized and operating under the laws of the State of Minnesota, with its principal place of business in the City of St. Paul in said state; and the Employers Mutual Insurance and Service Company is and during the times named in the pleadings has been a foreign corporation organized and existing under the laws of the State of Maryland. Said insurance company has never complied with the laws of the State of Minnesota in respect to qualifying for the purpose of transacting business within this state and has never appointed a resi-

dent agent within the state and has not complied with the statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of plaintiff to do business within the state.

3. The contract of insurance herein was made and entered into in the following manner: A representative of the plaintiff came to the State of Minnesota and at a public meeting held in said county and state made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the plaintiff, and at that time and [fol. 19] place distributed blank forms of application for membership in and insurance in said plaintiff company, and that this defendant, receiving one of said blank forms, caused the same to be filled out and sent down the same, with its check covering the initial premium or assessment, to the home office of the plaintiff company at Baltimore. Thereupon, the policy or contract was written at the home office of the plaintiff company and mailed to the defendant in said county and state.

As Conclusions of Law, the Court finds that plaintiffs are entitled to judgment against the defendants in the sum of $633.60, together with interest thereon at the rate of six per cent per annum from the 20th day of August, 1921, and the plaintiffs' costs and disbursements herein.

Let judgment be entered accordingly.
Entry of Judgment stayed 30 days.
Dated April 9, 1925.

Charles Bechhoefer, District Judge.

MEMORANDUM

The plaintiffs as receivers of Employers Mutual Insurance and Service Company (herein referred to as "the insurance company") seek to recover the amount of an assessment heretofore levied by the Board of Directors of the insurance company against the defendant as a policyholder in said company.

[fol. 20] The case is submitted upon a stipulation by the parties to the effect (1) that all allegations of the complaint are true; (2) that the insurance company is a Maryland corporation which has never complied with the laws of Minnesota in respect to admission to do business in this state; (3) that the contract of insurance in controversy was made and entered into in the manner set forth in the third paragraph of the findings.

Defendant maintains that the stipulated facts compel the conclusion that in issuing its policy to the defendant the insurance company was doing business in this state and, since the insurance company had not been licensed to do business within this state and had not complied with those provisions of our statutes relating to their right to transact business here, this action cannot be maintained.

Defendant further contends that it is immaterial where the contract was made, and whether made within or without the state, the action cannot be maintained and that on the pleadings, judgment should be ordered for the defendant.

Plaintiffs answer these contentions by saying that the insurance company did not transact any business within this state and in no respect has violated any of the statutes in question; that the defendant by contract executed in the State of Maryland has obligated itself for the payment of the money demanded in this action and that the contract is valid.

The question presented was considered by the Supreme Court of the United States in Minnesota Commerical Men's [fol. 21] Association v. Benn, 261 U. S. 140. This case reviewed the ruling of our Supreme Court in Benn v. Minnesota Commercial Men's Association, 149 Minn. 497, in which the Court said that the defendant was doing business in Montana. It appeared that the defendant had never maintained any office except in Minneapolis, Minnesota, where its business was transacted, and that it never owned property or sought permission to do business in any other State. Applications for membership on printed forms were usually presented by mail and acted upon by the Board of Directors at the office in Minneapolis, and, if accepted, certificates were issued and mailed to the members.

Assessments and dues were paid at this office and notices in respect thereto were mailed to the members. New members were procured by advertisement and through the solicitation of old members. Although not essential applications frequently bore a member's recommendation, and no compensation was paid to soliciting members, except occasionally in the form of premiums or prizes, and no paid solicitors or agents were employed. The application in question was by a resident of Montana and recommended by a resident of that state and was mailed from Montana to the company's office at Minneapolis.

Upon this showing our Supreme Court held that the defendant was doing business in the State of Montana. Upon review it was held that the facts show that the agreement was a Minnesota contract there made and to be performed [fol. 22] and that the Montana court was without jurisdiction to act, for the reason that the defendant was not doing business in that state. In this connection, the Court said:

"We think it cannot be said that the Association was doing business in Montana merely because one or more members, without authority to obligate it, solicited new members. That is not enough to warrant the inference that the corporation has subjected itself to the local jurisdiction."

In the instant case it appeared that a representative of the insurance company came to Minnesota, attended a public meeting held in Ramsey County, made certain representations and presented certain propaganda with reference to the insurance sought to be written and distributed blank forms of application for membership. Thereafter, the defendant caused an application for membership to be filled out and sent the same with remittance for the initial premium to the home office of the insurance company at Baltimore. Thereupon, the policy was written at the home office and mailed to the defendant.

In the case cited, solicitation was by old members having no authority to obligate the company. It does not appear from the stipulated facts that the representative of the insurance company who came to Minnesota had authority to obligate the company, nor does it appear that the repre-

sentative had contracted or attempted to contract as in the interstate commerce cases. See Defender Auto Lock [fol. 23] Co. v. Schmelzel, 157 Minn. 285, and cases cited.

Upon the authority of Minnesota Commercial Men's Association v. Benn, supra, it is held that in issuing its policy to the defendant the insurance company was not doing business in this state and in consequence it was not obliged to comply with the statutory provisions of this state relating to the right of foreign insurance companies to do business here.

It can heardly be said, as intimated in a case cited by defendant's counsel, that the laws and public policy of the state may be such as to forbid the enforcement of a legal contract such as the one here in controversy, when such contract is made in a foreign state and requires performance in Minnesota. As said in Terral v. Burke Construction Co., 257 U. S. 529-533, the sovereign power of the state is "subject to the limitations of the supreme fundamental law."

Bechhoefer, J.

[fol. 24] STIPULATION RE SETTLED CASE

It is hereby stipulated that the foregoing proposed case, consisting of seventeen pages of typewritten matter, may be taken as conformable to the truth and as containing all the records, files, rulings, orders and other proceerings of such trial, and that the same may be settled and allowed as the settled case herein by the Honorable Charles Bechhoefer, without notice.

Dated this 11th day of April, 1925.

Barrows & Metcalf, Attorneys for Plaintiffs. Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant.

ORDER SETTLING SETTLED CASE

Pursuant to the stipulation by the attorneys for the respective parties herein, I hereby certify that the foregoing case, consisting of seventeen pages of typewritten matter,

is conformable to the truth and contains all the records, files, rulings, orders and other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

Dated this 25th day of April, 1925.

Charles Beehhoefer, District Judge.

[fol. 25] NOTICE OF MOTION FOR NEW TRIAL

To James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen, and Arthur M. Siegk, receivers of Employers Mutual Insurance and Service Company, and to Messrs. Barrows & Metcalf, attorneys for plaintiffs, 1604 Pioneer Building, Saint Paul, Minnesota:

You will please take notice that the defendant above named will, on the 18th day of April, 1925, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, move said court for its order amending the Conclusions of Law herein as follows:

I

Amending Conclusions of Law so as to make the same read as follows:

"As Conclusions of Law, the court finds that defendant is entitled to judgment against plaintiffs:

1. That plaintiffs are not entitled to any relief, and that plaintiffs take nothing by this action.
2. That defendant have judgment against the plaintiffs for its costs and disbursements herein.

Let judgment be entered accordingly."

II

The grounds of the foregoing motion will be that the Conclusions of Law are not justified by the facts as stipulated [fol. 26] to by the parties, and not justified by the facts as found by the Court, and are contrary to law, and that the amended Conclusions of Law herein proposed are war-

ranted, justified and required by the facts as stipulated to by the parties and by the facts as found by the Court, and that defendant is entitled to have said amended Conclusions of Law as a matter of right and of law.

III

And you are further notified that at the time and place aforesaid, and after the argument of the foregoing motion to amend the Conclusions of Law, in the event that said motion is denied, the defendant will move the Court for an order vacating and setting aside the decision of the Findings of Fact and Conclusions of Law filed on April 9, 1925, and granting the defendant a new trial on the following grounds:

1. That the decision is not justified by the evidence and is contrary to law.

IV

Said motion will be based upon all the pleadings, files, records and settled case.

Dated this 11th day of April, 1925.

Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Defendant, 1015 Merchants National Bank Bldg., Saint Paul, Minnesota.

[fol. 27] Order Denying Motion for New Trial

The above entitled cause came regularly on and was heard before the undersigned, one of the judges of said court, on motions of defendant to amend the Conclusions of Law heretofore filed in said action, and, in the event of a denial thereof, for an order vacating and setting aside the decision and Findings of Fact and Conclusions of Law filed as aforesaid and granting defendant a new trial. Messrs. Barrows & Metcalf appeared as attorneys for plaintiffs and Messrs. Oppenheimer, Peterson, Dickson & Hodgson appeared as attorneys for defendant.

The Court having heard the arguments of counsel for the respective parties, and having duly considered the same, together with all the files and records herein, it is

Ordered that the said motions be and they are in all things hereby denied.

Charles Bechhoeffer, District Judge.

Dated April 25, 1925.

[fol. 28] NOTICE OF APPEAL

To Messrs. Barrows & Metcalf, attorneys for the above-named plaintiffs, and to Mr. N. C. Robinson, clerk of said district court:

Please take notice that the above named defendant appeals to the Supreme Court of the State of Minnesota, from the order of the said District Court entered herein, on the 25th day of April, A. D. 1925, denying defendant's motion for an order vacating and setting aside the decision and findings of fact and conclusions of law filed herein and granting defendant a new trial, and from the whole thereof.

Dated this 4th day of May, A. D. 1925.

Oppenheimer, Peterson, Dickson & Hodgson, Montreville J. Brown, Attorneys for Defendant.

Due service admitted.
Bond on appeal approved and filed.

[fol. 29] IN SUPREME COURT OF MINNESOTA

[Title omitted]

Syllabus

1. When it appears that a foreign insurance company had not complied with any of the requirements of the statutes of Minnesota applicable to companies writing insurance against risks arising in the state, its courts should not lend their aid to the enforcement

of a contract of insurance indemnifying a citizen of Minnesota against "strike losses" sustained therein, although the policy of insurance was issued in another state upon the written application of the insured made in this state and mailed to the home office of the insurance company.

2. Entering into a contract of insurance in the manner above described is not interstate commerce. The policy is a simple contract of indemnity and its interstate character does not give it immunity from state control.

Reversed

[File endorsement omitted.]

OPINION—Filed March 5, 1926, and note appended thereto

The plaintiffs are the receivers of an insolvent insurance company whose business it was to insure employers of labor against loss by reason of strikes on the part of their employees. The defendant is a Minnesota corporation operating a printing establishment in the city of St. Paul. After a trial by the court, judgment in plaintiff's favor was ordered, and defendant appealed from an order denying a new trial.

A representative of the insurance company came to St. Paul and, at a public meeting, made certain representations as to the desirability of the kind of insurance written by [fol. 30] the company and distributed its blank applications for membership and insurance. Defendant received one of the applications, filled it out and sent it, with a check for the first premium, to the home office of the company in Baltimore, where the policy was written and then sent to defendant by mail.

The policy provided that the insured should be liable for assessments if the premiums charged were not sufficient to pay loses. They proved to be insufficient, the company became insolvent receivers were appointed, the policyholders were assessed, and this action was brought to recover the amount of defendant's assessment.

The defense is that the company never complied with the insurance laws of this state.

The question to be decided is this: Can a foreign insurance company, or receivers appointed in liquidation proceedings, maintain an action against the insured in a court of this state to collect an assessment, when it appears that the company failed to comply with the provisions of the statute regulating the business of insurance?

The trial court answered the question in the affirmative, saying "upon the authority of Minn. Com'l Men's Assoc. v. Benn, 261 U. S. 140, it is held that in issuing its policy to the defendant, the insurance company was not doing business in this state and, in consequence, it was not obliged to comply with the statutory provisions of this state relating to the right of foreign insurance companies to do business here." Unless the Benn case controls the decision of the case at bar, the question above stated must be answered in the negative.

In Seamans v. Christian Bros. Mill Co., 66 Minn. 205, 68 N. W. 1065, the court had before it the identical question presented here. It was there held that an insurance company which had not complied with the statutory require- [fol. 31] ments so as to be authorized to do business in this state could not recover a premium on a contract insuring property in this state whether the contract was made within or without the state. In the course of the opinion it was said that the statutory provisions are police regulations intended to protect the people of this state against irresponsible insurance companies and to compel all insurance companies doing business in the state or taking risks on property therein to comply with our local laws; that, if the public policy of the state prohibits the making of a certain contract and the contract is made elsewhere, the state is not bound to enforce it by extending to it the comity which exists between states; that the laws and public policy of the state may destroy this comity, and especially so if the contract was to be performed within the state although it was made elsewhere.

Swing v. Red River Lbr. Co., 105 Minn. 336, 342, 117 N. W. 442, cites the Seamans case with approval.

The doctrine there announced prevails in Wisconsin. Rose v. Kimberly & Clark Co., 89 Wis. 545; Presbyterian Ministers Fund v. Thomas, 126 Wis. 281. In the Rose case the court remarked that the evil which the insurance stat-

utes seek to correct is not the writing of the policy within the state by an unlicensed company, but the writing of such a policy at all. The same doctrine prevails in Michigan. Swing v. Cameron, 145 Mich. 175; in Iowa, Seamans v. Zimmerman, 91 Ia. 363; and in Pennsylvania, Swing v. Munson, 191 Pa. 582. The basis upon which it rests is that the principle of judicial comity does not require a state court to lend its aid in the enforcement of contracts which interfere with and tend to frustrate the policy established by the legislature. Commonwealth Mut. Fire Ins. Co. v. Hayden, 60 Neb. 636.

These decisions must be read in conjunction with Allgeyer v. Louisiana, 165 U. S., 580, in which the court condemned [fol. 32] a state statute which subjected to a fine any person who did an act within the state intended to effect for himself or for another insurance on property in the state in a marine insurance company which had not complied with the laws of Louisiana. In the opinion of the court, it was said that it may be conceded that the right to contract in relation to persons or property within the jurisdiction of the state may be regulated and sometimes prohibited if the contract conflicts with the policy of the state as contained in the statutes. But the power cannot extend to prohibiting the citizens from making contracts outside the limits and jurisdiction of the state *which are also to be performed outside of such jurisdiction.* The words italicized are significant and indicate that the court intended to limit the application of the rule announced to cases in which a foreign insurance company does not engage to perform its part of the contract in the state where the insured resides and in which the property insured is situated.

The policy of the legislature is expressed in Sec. 3314, G. S. 1923, as follows:

"It shall be unlawful for any * * * corporation to solicit, or make, or aid in the soliciting, or making of any contract of insurance not authorized by the laws of this state. All contracts of insurance on property, lives or interests in this state, shall be deemed to be made in this state."

Sec. 3722, G. S. 1923, also throws light on the subject. It permits a citizen of this state to take insurance in an unlicensed company by giving a bond to the insurance com-

missioner for the payment of a tax on the premium charged for the insurance. When the bond is given, the commissioner issues a license good for one year and the insurance is declared to be valid.

Other statutory requirements need not be stated in detail. It is sufficient to say that they require, among other things, that a foreign insurance company must secure a license to do business in this state; deposit with the in- [fol. 33] surance commissioner a certified copy of its charter and by-laws and a statement showing its financial condition; file an instrument in the office of the commissioner appointing him, or his successor in office, its attorney in fact upon whom proofs of loss and process in any action or legal proceeding may be served; make a deposit of securities with the commissioner for the protection of Minnesota policyholders, or file a certificate by the insurance commissioner of the state of its organization that it has deposited with him securities in a required amount for the protection of all its policyholders. Secs. 3309, 3591, 3592, 3593, 3595, G. S. 1913, and Chapter 380, Laws 1921.

In the case at bar the risk insured against was one to be encountered in this state. It was incidental to the operation of defendant's printing establishment in St. Paul. If there were a loss, it would be sustained in this state. The policy is not in the record and we do not know where the loss, if one occurred, was to be adjusted or paid. If the contract was to be performed in Maryland, it may be true that the courts of this state could not refuse to enforce it and that such a refusal would contravene certain provisions of the Federal Constitution. Stone v. Old Colony St. Ry., 212 Mass. 459; N. Y. Life Ins. Co. v. Head, 234 U. S. 149. In the present case there is no showing that the contract was not to be performed in Minnesota, hence these cases are not controlling.

We come now to Minn. Com'l Men's Assoc. v. Benn, supra. In that case a Minnesota corporation issued an accident and health certificate to Robert J. Benn of Montana. Upon his death his widow brought an action in a Montana court to recover the sum due under the certificate of membership. Service of the summons and complaint was made upon the secretary of state and insurance commissioner of Montana.

The association did not appear or defend and judgment went against it by default. Thereafter Mrs. Benn brought an action in this state upon the Montana judgment. We [fol. 34] held that the Montana court had jurisdiction to enter the judgment, and the case was carried to the United States Supreme Court. The opinion of Mr. Justice McReynolds sets out the facts as follows: The only office maintained by the association was located in Minneapolis; its business was transacted there; it owned no property and had not secured permission to do business in any other state; it had printed forms of application for membership which, when filled out, were sent to the home office and submitted to the board of directors for approval: Benn's application was sent by mail from Kalispell, Montana, to Minneapolis, was approved, and his certificate of membership issued and mailed to him; assessments and dues were payable at the Minneapolis office; new members were procured by advertisement and through the solicitation of older members, who were urged to furnish lists of prospects and to use their influence to increase the membership, but no member had authority to bind the association; no paid solicitors or agents were employed; proofs of loss were sent to the home office and adjusted there by the directors and losses were settled by checks on Minneapolis banks mailed from the home office. Upon this state of facts the court concluded that the association was not doing business in Montana; had not subjected itself to the jurisdiction of the courts of that state and was not present within the state when service of the summons was made on the state officers mentioned, hence a personal judgment against the association based on such service was void for want of jurisdiction.

In the case at bar an entirely different situation is presented. The insurance company has not been sued. Through its receivers, it is the plaintiff in an action brought against a citizen of this state to enforce an obligation incurred upon a contract alleged to have been made in another state, the subject matter of which was the insurance of a Minnesota corporation against losses it might sustain in carrying on its business within the state.

[fol. 35] We conclude that Seamans v. Christian Bros. Mill Co., supra, should be followed and that we should give

effect to the public policy of the state as expressed in the statutes to which we have referred, until the Supreme Court of the United States disposes of the question differently.

It has been suggested that the transaction in question was one in interstate commerce and beyond the control of the state, but such is not the case. Issuing a policy of insurance is not a transaction of commerce. The policy is a simple contract of indemnity and its interstate character does not give it immunity from state control. See N. Y. Life Ins. Co. v. Cravens, 178 U. S. 389, where the earlier decisions so holding are collated.

The order denying a new trial is reversed.

Lees, C.

[fol. 36] [Title omitted]

Per Curiam—Filed March 19, 1926

After filing the foregoing opinion, our attention was called to St. Louis Compress Co. v. Arkansas, 260 U. S. 346, where a statute of the state of Arkansas somewhat similar to Sec. 3722, G. S. 1923, was held to be in conflict with the Fourteenth Amendment to the Federal Constitution. We referred to Sec. 3722 and to other statutory provisions as evidence of the legislative policy in dealing with foreign corporations writing insurance on risks in this state. The validity of the statute was not considered but to avoid the possibility of misunderstanding, we append this note to the opinion.

[File endorsement omitted.]

[fols. 37-43] In Supreme Court of Minnesota

Settled Case from District Court of Ramsey County

Summons, June 19, 1924, omitted in printing.

Complaint omitted; printed side page 5 ante.

[fols. 44 & 45] Answer omitted; printed side page 12 ante.

[fol. 46] Reply omitted; printed side page 14 ante.

[fol. 47] STATE OF MINNESOTA,
County of Ramsey:

DISTRICT COURT, SECOND JUDICIAL DISTRICT

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY Hurlbut, William E. Thompson, Arthur M. Siegk, Receivers of Employers Mutual Insurance and Service Company, Plaintiffs,

vs.

BUCKBEE MEARS COMPANY, Defendant

STIPULATION OF FACTS

It is stipulated by and between the parties hereto as follows:

I

That all of the allegations contained in the complaint herein are true.

II

That defendant is a corporation, organized and operating under the laws of the State of Minnesota, engaged in the photo engraving business with its principal place of business and only factory situated in the City of Saint Paul, Ramsey County, Minnesota.

III

That the plaintiff, Employers Mutual Insurance and Service Company, is a foreign corporation organized and existing under the laws of the State of Maryland, and that it has never complied with the statutes of the State of Minnesota

in respect to qualifying for the purpose of transacting business, insurance or otherwise, within the State of Minnesota, and has never appointed a resident agent within the State as required by the Statutes of the State, and has not complied with the Statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of the plaintiff to do business within the state.

[fol. 48] IV

That the contract of insurance issued by said Employers Mutual Insurance and Service Company to defendant and upon which this suit is brought was made and entered into in the following manner:

A representative of said insurance company came to the State of Minnesota and at a meeting of printers, lithographers and engravers arranged by said representative and held in the City of Saint Paul, in said County and State, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the said insurance company, and at that time and place furnished blank forms of application for membership and insurance in said insurance company, and that this defendant receiving one of said blank forms caused the same to be filled out and sent the same, with its check covering the initial premium or assessment, to the Home Office of said insurance Company at Baltimore. Thereupon the policy or contract was written at the Home Office of the said insurance company and mailed to the defendant in said County and State.

V

That as a result of the representations made and the propaganda presented by said representative of said plaintiff at the meeting aforesaid, several printers, lithographers and engravers, in addition to defendant, all citizens of said State of Minnesota with their places of business within said State, filled out blank forms of application for membership and insurance in plaintiff company furnished to them at said meeting by said representative, and mailed the same,

with checks covering the initial premiums or assessments, to the Home Office of plaintiff company at Baltimore, Maryland. That thereafter policies or contracts similar to the one issued to defendant were executed by plaintiff company at its said Home Office and mailed to said printers, lithog- [fol. 49] raphers and engravers at their places of business within said State of Minnesota.

VI

That the contract or policy of insurance issued to defendant by plaintiff as aforesaid is as set forth in Exhibit A hereto attached and made a part hereof.

VII

It is further stipulated that upon this stipulation, the pleadings, and all files herein, the case is submitted to the Court for its decision.

Dated this 21st day of October, 1926.

Barrows & Metcalf, Attorneys for Plaintiffs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly, Attorneys for Defendant.

[fol. 50] EXHIBIT A

Employers Mutual Insurance & Service Co. of Maryland
(Hereinafter called the Company)

Employer—"The Scales Must Balance"—Employee

Justice—Equity

$88,000.00. No. 412.

In consideration of the statements set forth in the Declarations hereto attached, and hereby made a part hereof, and of the Premium Deposit specified therein (which deposit is subject to adjustment annually); and that the Assured, by accepting this Policy, does also bind himself, his heirs, executors, administrators and assigns to pay all such further sums as may from time to time be assessed on this

Policy by the Directors of said Company, in conformity with the Articles of Incorporation and By-Laws of this Company and the Laws of the State of Maryland; provided that the Assured shall not be liable in any case to pay more than an amount equal and in addition to the annual Premium Deposit for any Policy year, does hereby agree to indemnify the individual, firm or corporation named in Statement 1 of the Declarations (herein called the Assured), for the period of one year, beginning October 22, 1920, at twelve and one minute o'clock A. M., standard time at the location of the plant mentioned in Statement 4 of said Declarations subject to renewal as hereinafter set forth, for the actual loss sustained through a strike beginning at any time while this Policy is in force, and incurred during a period not exceeding Three Hundred working days next succeeding the beginning of such strike, at a rate not exceeding two hundred ninety-three and 33/100 ($293.33) dollars per diem, and not exceeding an aggregate total indemnity of Eighty-eight thousand and no/100 ($88,000.00) dollars during any Policy year.

Part 1. Against all direct loss of average daily net profits and fixed charges during the period of prevention of production or operation of the Assured's business, in whole or in part, at the plant of the Assured described in Statement 4 of said Declarations, caused by a strike of all or part of the employees of the Assured.

Part 2. To defend in the name of and on behalf of the Assured any suits or other legal proceedings brought against the Assured by striking employees to enforce a claim, whether groundless or not, for damages, or for any payment, arising out of or by reason of any strike covered by this Policy; and to pay all expenses incurred by this Company in defending such suits or proceedings; not including, however, any obligation to pay the amount of any judgment or decree in any such suits.

Subject to the following conditions:

A. A strike, within the meaning of this Policy, is a cessation of work by a part, or all of the employees of the Assured, as the result of concerted action by such employees; to enforce a demand for higher wages; to secure the redress

of a grievance, real or alleged; to utter a protest or to resist a demand or a rule made by the Assured; or due to or caused by directions or orders issued by any labor union, or organization of employees, whether of the Assured or otherwise.

B. If a strike occurs or is begun during the term of this Policy so as to cause either a total or a partial prevention of production, the Company shall be liable for the actual loss sustained not exceeding in either case the per diem indemnity nor the total indemnity herein stated.

C. If, during the continuance of a strike, covered by this Policy, the plant of the Assured or any part thereof shall be destroyed or damaged by incendiarism, explosives or violence, due directly to or caused by strikers or their sympathizers, so as to prevent production, in whole or in part, the Company shall be liable for the actual loss of average daily net profits and fixed charges so occasioned, subject to the limitations expressed in Condition B and elsewhere in this Policy, for a period not longer than that required by the Assured, with due diligence, to place the plant in operation.

D. The Company shall not be liable for loss caused by strikes of mechanics or employees engaged in or on new construction work.

E. If the Assured carries other insurance, against a loss covered by this Policy, the Assured shall not be entitled to recover from the Company a larger proportion of the entire loss than the proportion that the amount of this Policy bears to the total amount of the Assured's valid and collectible insurance against such loss.

F. Upon the occurrence of a strike, or any demands or threat made upon the Assured, by any person or persons representing any organization or union or body of or for the Assured's employees, the Assured shall give immediate notice in writing with fullest information obtainable at the time, to the Company at its Home Office. If thereafter any suit is brought against the Assured to enforce a claim as described in Part 2 of the Insuring Clause, the Assured shall immediately forward to the Company, at its Home Office, every summons or process as soon as the same shall

have been served upon the Assured. Whenever requested by the Company, the Assured shall aid in securing information, evidence, and the attendance of witnesses; in effecting settlements; and in prosecuting appeals. The Assured shall at all times render to the Company all co-operation and assistance within the Assured's power. The Assured shall not voluntarily assume any liability; nor interfere in any negotiations or legal proceedings conducted by the Company on account of any claim described in Part 2 of the Insuring Clause; nor, except at the Assured's own cost, settle any claim, nor incur any other expense without the written consent of the Company previously given.

G. This Policy may be cancelled at any time after the first policy year at the request of the Assured; or, without prejudice to the rights of the Assured as respects anything that may occur during the period this Policy is in force, by the Company, during any year, by giving fifteen (15) days' written notice of such cancellation; the effective date of such cancellation, to wit, the last of said 15 days, shall then be the end of the Policy period. If this Policy shall be cancelled as herein provided, or become void, or cease, the earned premium shall be computed and adjusted at short rate in accordance with the table hereon; except that if this Policy is cancelled by the Company, or by the Assured when actually retiring from the business herein described, the earned premium shall be adjusted pro rata; but iin no event shall the earned premium be less than one hundred ninety and 8/100 ($190.08) dollars.

H. This entire Policy shall be void if the Assured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the Assured be not truly stated herein; or in case of any fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

I. In the event of disagreement as to the amount of loss, the same shall be ascertained by two competent and disinterested appraisers, the Assured and the Company each selecting one, and the two so chosen shall first select a com-

petent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire. All losses for which this Company is liable, pursuant to this Policy, shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss having been received by the Company in accordance with the terms of this Policy; provided, however, that in the event of loss through strike, or property damage as defined herein, the Company shall, if requested by the Assured, make partial payments every thirty (30) days in an amount not exceeding fifty per cent (50%) of the approximate actual loss that has occurred.

J. No suit or action on this Policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the Assured with all the foregoing requirements, nor unless commenced within twelve months next after the determination of the loss.

K. In case of payment of loss under this Policy the Company shall be subrogated to the extent of such payment to all right of recovery by the Assured for such loss, and such right shall be assigned to the Company by the Assured on receiving such payment.

L. The Assured, as often as required, shall permit the Company to inspect its plant or property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices and other vouchers or certified copies thereof if originals be lost, at such reasonable place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

M. No person shall be deemed an agent of the Company unless such person is authorized in writing as such agent, by the President, Vice President, or one of the Secretaries of the Company.

N. The premium deposit specified at the head of the Declarations is subject to an adjustment at any time, after inspection by the Company of the Assured's plant herein described, in accordance with the Company's schedule rating system, such adjustment not to exceed an increase or reduction thereof of twenty (20%) per cent. Such adjustment shall be effective only as to the current Policy year, and shall not be retroactive except as to the first adjustment made during the first year this Policy is in force.

O. Wherever in this Policy the word "Assured" occurs, it shall be held to include the legal representative of the Assured; and wherever the words "Working Day" occur, they shall be held to cover a period of twenty-four (24) hours.

P. All indemnity provided herein shall be forfeited and all rights of said Assured under this contract shall be cancelled and annulled in case said Assured shall wilfully and wantonly cause or bring about a strike for fraudulent or illegal purposes; or for the fraudulent purpose of creating a liability against the Company in order to collect indemnity therefrom; or for unduly and fraudulently prolonging a strike.

Q. This Policy, and all the obligations herein contained, shall renew itself, from year to year, after the expiration of the first Policy year, unless the Assured or the Company shall give notice in writing fifteen (15) days before the expiration of the current Policy year of a desire not to renew the same.

R. No condition or provision of this Policy shall be waived or altered except by endorsement attached hereto signed by the President and the Secretary and countersigned by one of the Assistant Secretaries of the Company.

Rate $.72.

Premium Deposit, $633.60.

Declarations

Statement 1. Name of Assured: Buckbee Mears Company.

Statement 2. Address of Assured: Newton Bldg., St. Paul, Minn.

Statement 3. The Assured is (Individual, Copartnership or Corporation): Minnesota Corporation.

Statement 4. The description of the Assured's trade or business; the location of each factory, shop and yard where such trade or business is conducted; the estimated number of employees at each location; and the estimated fixed charges and net profits for the current policy year, are given in the following table:

Kind of trade or business	Estimated number of employees: Male	Female	Estimated (a) fixed charges, (b) net profits		Location of each factory, shop and yard
(1) Photo Engraving....	46	14	(a)	$96,000.00	
	Total.....		(b)	15,000.00	Newton Bldg., St. Paul, Minn.
(2)	.....		(a)		
	Total.....		(b)	.....	.....
(3)	.....		(a)		
	Total.....		(b)	.....	.....
.....	Total 60		Total	$111,000.00	.....

Statement 5. Amount of Insurance applied for, $88,000.00 being $293.33 per diem for three hundred working days.

Statement 6. The Assured commenced business September 1st, 1907.

Statement 7. The Assured carries no Use and Occupancy Insurance, except as follows (if any, state kind and amount): None.

Statement 8. During the last Ninety Days, there has been no action to organize the Employees of the Assured, nor has there been any demand or threat on the part of such employees, which might provoke a strike, except as follows: No.

Statement 9. The Assured has no open or closed shop agreements with Employees, except as follows: Closed shop. Engraving Department only.

Statement 10. The Assured observes the prevailing local wage scale and working hours, except as follows: Yes.

Statement 11. The Assured has had no strike of Employees, except as follows: No.

Statement 12. The Assured is a member of no Employers' or Manufacturers' Association, except as follows: Minnesota Photo Engravers Association, American Photo Engravers Assn.; Citizens Alliance.

In witness whereof the Company has caused this Policy to be signed by its President and its Secretary, but the Policy shall not be binding upon the Company until countersigned by one of the Assistant Secretaries of the Company.

Edward C. Myers, President. Emlen T. Littell, Secretary.

Countersigned by Morris G. Myers, Assistant Secretary.

Short Rate Table

Number of months.....	1	2	3	4	5	6	7	8	9	10	11	12
Percentage of Premiums earned	30	40	50	60	65	70	75	80	85	90	95	100

[fol. 51] By-Laws of Employers Mutual Insurance and Service Company

Article I

The business of this Company shall be managed and conducted by a Board of Directors, which Board shall consist of three (3) members until February 4th, 1919. After that date the Board shall consist of not more than twenty-one (21) members and not less than eleven (11) members, and a majority of the Directors elected shall constitute a quorum. The Directors shall hold office until their successors are elected and shall choose one of their number to be president, and one to be vice-president. The Board of Directors shall have power to appoint a secretary and as many officers, clerks and inspectors to carry on the business of the Company as they may deem necessary, and shall, from time to time, fix the salaries and allowances to be made to each and every person in the employment of the Company.

Article II

The annual election of the Board of Directors shall be held on the third Wednesday in January, 1919, and in each succeeding year, from 12 o'clock noon to 1 o'clock p. m. Each member shall be entitled to one vote either in person or by proxy, and each stockholder, in the event that any stock is hereafter authorized or issued, shall be entitled to one vote for each share of stock held by him, provided in each case that the policy of the member or the

stock of the stockholder shall have been dated or held by him at least thirty (30) days immediately preceding such meeting. In case of any failure to hold an annual meeting the board shall take immediate steps to hold a special election. Due notice of any election shall be given by advertisement in some newspaper published in Baltimore City at least two weeks prior to such election, and by notice to each director and to each stockholder, if any there be. At all meetings of the Company five (5) or more members present in person or by proxy shall constitute a quorum.

Article III

The Directors shall choose by ballot one of their number as president. They shall also choose a vice-president, a secretary, a treasurer, and such other officers as they shall deem necessary. They shall also fix upon the place for the Home Office of the Company and the compensation to be allowed the officers and agents of the Company, including such officers and agents as may be members of the Board of Directors. The Directors may make such regulations respecting the powers, privileges and duties of the several officers and agents as may be found expedient from time to time. The Directors may appoint from their own number an Executive Committee to which they may delegate such of their powers as they may think proper. The president or the Directors may exercise any right reserved to the Com pany in any Policy of cancelling the same.

Article IV

Except as may be provided in these By-Laws the several officers of the Company shall have all the powers and privileges and shall perform all the duties incident to their respective offices, subject to the regulations of the Directors, under Article III.

The Treasurer shall not have authority to dispose of any of the securities of the Company without being authorized thereto by a vote of the Directors or a Finance Committee appointed by them.

Article V

Subject to the discretion of the Directors, the proper officers of this Company may issue policies of insurance of

this Company on any risks which are the legitimate subject of Insurance and which they are allowed by law to assume.

Article VI

Each member of this Company shall pay in addition to the cash premium written in his Policy, all such sums as may be assessed by the Directors of this Company pursuant to the laws of the State of Maryland, but not in any event to exceed an additional amount equal to the amount of the cash premium. And the Directors may, from time to time, whenever the Company in their discretion has sufficient surplus to warrant such action, declare a dividend out of such surplus to policyholders who have been members for three (3) years or more; said dividend to be apportioned among members pro rata according to the amount of premiums paid by them during one year immediately prior to the declaration of such dividend.

Article VII

These By-Laws may be amended, repealed or altered, in whole or in part, at any meeting of the Company, provided that due notice of the time, place and purpose of such meeting shall have been given, as provided in Article II.

It is hereby understood and agreed that should a strike be in progress at the plant named herein at the time of the date named as the beginning of the within policy, the Company shall not be liable for any loss sustained as the result of such strike; or, if notice has been given within thirty days prior to said date by any Employees of the Assured of an intention to strike, and such notice has not been withdrawn, this policy shall not become effective until the Assured has certified to the Company that such strike has been settled, or such notice of strike withdrawn; in either case the date of certification to become the effective date of this policy.

Edward C. Myers, President. Emlen T. Littell, Secretary. Morris G. Myers, Asst. Secretary.

[Endorsed:] The total amount of liability of the Assured under this Policy is one time the annual premium deposit. Date: October 22, 1920. Amount, $88,-

000.00. No. 412. Employers Mutual Insurance & Service Co. Employer—"The Scales Must Balance"—Employe. Justice—Equity. Incorporated under the General Laws of Maryland as a Mutual Company. Home office: Baltimore, Maryland. Name of Assured: Buckbee Mears Company, Newton Building, St. Paul, Minn. Notice. The Assured is hereby notified that by virtue of this Policy, he is a member of the Employers Mutual Insurance and Service Company, and is entitled to vote either in person or by proxy at any and all meetings of the Company. The Annual Meetings are held at its Home Office on the third Wednesday in January in each year, at 12 o'clock M.

[fol. 52] [Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on for trial at a general term of this Court on the 21st day of October, 1926, plaintiffs appearing by their attorneys, Messrs. Barrows & Metcalf, and defendant by its attorneys, Messrs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly. Thereupon the action was submitted for decision upon a stipulation of facts between the parties dated the 21st day of October, 1926.

Now, upon such stipulation, after due consideration the Court finds—

As Facts

I

That all of the allegations contained in the complaint herein are true.

II

That defendant is a corporation, organized and operating under the laws of the State of Minnesota, engaged in the photo engraving business, with its principal place of business and only factory situated in the City of Saint Paul, Ramsey County, Minnesota.

[fol. 53] III

That the plaintiff, Employers Mutual Insurance and Service Company, is a foreign corporation, organized and existing under the laws of the State of Maryland, and that it

has never complied with the statutes of the State of Minnesota in respect to qualifying for the purpose of transacting business, insurance or otherwise, within the State of Minnesota, and has never appointed a resident agent within the state as required by the statutes of the state, and has not complied with the statutes of the State of Minnesota in respect to qualifying foreign corporations of the character of the plaintiff to do business within the state.

IV

That the contract of insurance issued by said Employers Mutual Insurance and Service Company to defendant and upon which this suit is brought was made and entered into in the following manner:

A representative of said insurance company came to the State of Minnesota and at a meeting of printers, lithographers and engravers arranged by said reprsentative and held in the City of Saint Paul, in said county and state, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the said insurance company, and at that time and place furnished blank forms of application for membership and insurance in said insurance company, and that this defendant, receiving one of said blank forms, caused the same to be filled out, and sent the same, with its check covering the initial premium or assessment, to the home office of said insurance company at Baltimore. Thereupon the policy or contract was written at the home office of said insurance company and mailed to the defendant in said county and state.

[fol. 54]

V

That as a result of the representations made and the propaganda presented by said representative of said insurance company at the meeting aforesaid, several printers, lithographers and engravers in addition to defendant, all citizens of said State of Minnesota, with their places of business within said state, filled out blank forms of application for membership and insurance in said insurance company furnished to them at said meeting by said representa-

tive, and mailed the same with checks covering the initial premiums or assessments to the home office of said insurance company at Baltimore in the State of Maryland. That thereafter policies or contracts similar to the one issued to defendant were executed by said insurance company at its said home office and mailed to said printers, lithographers and engravers at their places of business within said State of Minnesota.

VI

That the contract or policy of insurance issued to defendant by said insurance company as aforesaid is as set forth in Exhibit A attached to said stipulation.

As Conclusions of Law

the Court finds that defendant is entitled to judgment against the plaintiffs:

1. That plaintiff is not entitled to any relief, and that plaintiff take nothing by this action.

2. That said action be dismissed and that defendant have and recover of plaintiffs its costs and disbursements herein.

Let judgment be entered accordingly.

Dated this 21st day of October, 1926.

Charles Beehhoefer, District Judge.

[fol. 55] [Title omitted]

JUDGMENT

The above entitled action came on for trial at a general term of the above named court, without a jury, on the 21st day of October, 1926, upon a stipulation of facts, Messrs. Barrows & Metcalf appearing as attorneys for and on behalf of plaintiffs, and Messrs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly appearing as attorneys for and on behalf of defendant; and the court, having considered the facts stipulated as aforesaid, and having been fully advised in the premises, did make and file in writing

its findings of fact, conclusions of law and order for judgment.

Now, Therefore, pursuant to said findings and order for judgment, it is hereby adjudged and decreed:

1. That plaintiffs are not entitled to any relief, and that they take nothing by this action.

2. That the action be dismissed.

3. That defendant have and recover of plaintiffs the sum of Ten Dollars ($10.00) costs heretofore taxed.

Witness the Honorable Olin B. Lewis, Judge of said Court, at Saint Paul, Minnesota, this 28th day of October, 1926.

N. C. Robinson, Clerk, by G. A. Johnson, Deputy.

Form and contents of the above decree are hereby approved. Bechhoefer, District Judge.

[fol. 56] [Title omitted]

STIPULATION RE SETTLED CASE

It is stipulated that the hereunto attached proposed Settled Case may be certified and allowed as and for the Settled Case and Record herein.

Dated November 9th, 1926.

Oppenheimer, Peterson, Dickson & Hodgson, Attorneys for Plaintiffs, 1604 Pioneer Building, Saint Paul, Minnesota. Barrows & Metcalf, Attorneys for Defendant, Merchants Bank Building, Saint Paul, Minnesota.

[fol. 57] [Title omitted]

ORDER SETTLING SETTLED CASE

The foregoing and annexed nineteen (19) typewritten and printed sheets contain all of the pleadings, stipulations,

proceedings, and findings had in connection with the hearing and decisions of the within entitled case, and I hereby Certify and allow the same as and for the settled case herein.

Charles Bechhoefer, District Judge.

Dated November 1st, 1926.

[fol. 58] [Title omitted]

NOTICE OF APPEAL

To Messrs. Oppenheimer, Dickson, Hodgson, Brown & Donnelly, attorneys for plaintiff, Saint Paul, Minnesota, and N. C. Robinson, Clerk of the District Court, Ramsey County, Minnesota.

GENTLEMEN: You will please take notice that the above named defendant appeals to the Supreme Court of the State of Minnesota from that certain judgment entered and docketed in the above entitled cause on October 28th, 1926, and from the whole thereof.

Yours respectfully, Barrows & Metcalf, Attorneys for Defendant, 1604 Pioneer Building, Saint Paul, Minnesota.

Dated November 5th, 1926.

[fol. 59] IN SUPREME COURT OF MINNESOTA

25987

JAMES W. BOTHWELL et al., Plaintiff-Respondent,

vs.

BUCKBEE MEARS COMPANY, Defendant-Appellant

OPINION—Filed December 10, 1926

PER CURIAM:

The defendant appealed from a judgment entered on Oct. 28, 1926 in the District Court of Ramsey County pur-

suant to the order from which the appeal was made in Bothwell, et al. v. Buckbee Mears Company, 166 Minn. 285, 207 N. W. 724. The matter involved in this appeal was thoroughly considered in the former opinion. Upon the authority of that opinion the judgment from which this appeal was taken is affirmed.

Affirmed.

[File endorsement omitted.]

[fol. 60] IN SUPREME COURT OF MINNESOTA

[Title omitted]

JUDGMENT—Filed December 22, 1926

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed.

Dated and signed December 22nd, A. D. 1926.

Grace F. Kaercher, Clerk of Supreme Court, Minnesota. (S. P. Court Seal.)

[File endorsement omitted.]

Clerk's certificate to foregoing paper omitted in printing.

[fol. 61] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. —. Minnesota Supreme Court. Term No. —. James W. Bothwell, William J. Michel et al., receivers of Employers Mutual Insurance and Service Company, petitioners, vs. Buckbee, Mears Company. Petition for writ of certiorari and exhibit thereto. Filed —— —, 1927. File No. —— —, ——.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1926

No. 854

JAMES W. BOTHWELL, WILLIAM J. MICHEL, et al., Receivers of Employers Mutual Insurance and Service Company, Petitioners,

vs.

BUCKBEE, MEARS COMPANY

ORDER ALLOWING CERTIORARI—Filed March 7, 1927

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.